

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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**UNITED STATES OF AMERICA**

**CASE NO.**

**Plaintff,**

**vs.**

**BASIC RECYCLING, INC.**

**Defendant.**

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**COMPLAINT FOR VIOLATIONS OF THE CLEAN AIR ACT**

Plaintiff, the United States of America, by the Attorney General of the United States, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), through the undersigned attorneys, files this Complaint and alleges as follows:

**NATURE OF THE ACTION**

1. This is a civil action brought against Basic Recycling, Inc. ("Defendant") pursuant to Section 113(a)(3) and 113(b)(2) of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(a)(3) and 7413(b)(2), and the controlling regulation, 40 C.F.R. Part 82, Subpart F.

2. Defendant has been in violation of disposing of refrigerant containing appliances at its scrap metal facility in Detroit, Michigan in a manner which violated Section 608(b)(1) of the Clean Air Act, 42 U.S.C. § 7671g(b)(1) and its implementing regulations, 40 C.F.R. § 82, Subpart F (Protection of Stratospheric Ozone, Recycling and Emissions Reduction).

3. The United States seeks injunctive relief and the assessment of civil penalties to address Defendant's past violations and prevent future violations.

**JURISDICTION, VENUE, AND NOTICE**

4. The court has jurisdiction over the subject matter of this action and over the Parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

5. Venue lies in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a).

6. Notice of the commencement of this action has been given to Defendant and the State of Michigan, as required by Sections 113(a) and 113(b) of the Act, 42 U.S.C. § 7413(b).

**DEFENDANT**

7. Defendant, a Michigan Corporation, is a scrap metal and iron recycler located at 14201 Fullerton Street, Detroit, Michigan and is a person as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e)

**STATUTORY AND REGULATORY BACKGROUND: DISPOSAL OF**

**APPLIANCES CONTAINING REFRIGERANTS**

8. Section 602 of the Act, 42 U.S.C. § 7671a, lists substances used as refrigerants which are identified by the EPA as Class I and/or II substances. This list includes chlorofluorocarbons (CFCs). The EPA has determined that the release of these substances into the environment causes ozone depletion and has harmful effects on human health and the environment.

9. Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2), sets forth requirements regarding the use and disposal of Class I and Class II substances during service, repair, or disposal of appliances and industrial process refrigeration.

10. Under Section 608(c)(1) of the Act, 42 U.S.C. 7671g(c)(1), it is unlawful for any person, in the course of disposing of an appliance, to knowingly vent or dispose of Class I or Class II substance used as a refrigerant in such appliance in a manner which permits such substance to enter the environment.

11. Appliance is defined in Section 601(a) of the Act, 42 U.S.C. § 7671(1) and 40 C.F.R. § 82.152(a) as any device which contains and uses a Class I or Class II substance as a refrigerant, and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

12. Section 608(a) of the Act, 42 U.S.C. § 7671g, required the EPA to promulgate regulations that include, among other things, standards and requirements regarding the use and disposal of Class I and Class II substances during service, repair, or disposal of appliances and industrial process refrigeration. These regulations, as amended, are codified in Title 40 of the Code of Federal Regulations, Part 82, Subpart F.

13. The regulations provide that no person maintaining, servicing, repairing, or disposing of appliances may knowingly vent or otherwise release into the environment any Class I or Class II substance used as refrigerant in such equipment. 40 C.F.R. § 82.154(a).

14. Persons who take the final step in the disposal process of a small appliance must either (1) recover any remaining refrigerant from the appliances in accordance with set procedures or (2) verify, through written verification statements from their suppliers that the appliances no longer contain any refrigerant. 40 C.F.R. § 82.156(f).

15. In an Applicability Determination (Control Number C020003) issued on May 3, 1995, the EPA determined that one who handles appliances in a manner that would likely result in the release of the refrigerant are, in fact, taking the final step in the disposal process.

16. Persons who choose the signed verification statement option of 40 C.F.R. § 82.156(f) must notify the suppliers of the appliances that proper methods must be used to remove the refrigerant from the appliances before delivery of the items to the facility. Furthermore, verification statements must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered.

### **GENERAL ALLEGATIONS**

17. Defendant is a scrap metal and iron recycler whose operations include the receiving, processing, and temporary storage of appliances, scrap metal, and other items manufactured with metal.

18. On February 21, 2008, ("2008 Inspection") the EPA inspected the Defendant's Facility to determine how it handled the disposal of appliances that contained refrigerant.

19. During the 2008 inspection, EPA inspectors determined that the facility did not have refrigerant recovery equipment to perform on-site recovery of refrigerant.

20. Also during the 2008 inspection, EPA inspectors found that Defendant did not collect verification statements from the suppliers of appliances.

21. On April 9, 2008, as a result of its inspection, EPA sent Defendant a compliance assistance package.

22. On August 11, 2008, the EPA sent Defendant an information request under Section 114 of the Act ("2008 Section 114 Request"), 42 U.S.C. § 7425(a). Defendant did not respond to the 2008 Section 114 Request despite several reminders to do so.

23. As a result of its inspection and Defendant's lack of response to the 2008 Section 114 Request, EPA issued a Finding of Violation ("2008 FOV") to Defendant on November 25, 2008, for violating the final disposal requirements of 40 C.F.R. Part 82, Subpart F.

24. Following the 2008 FOV, EPA held a Section 113 conference with Defendant on January 7, 2009. EPA reminded Defendant of its obligation to respond to the 2008 Section 114 Request. During the conference, EPA confirmed that Defendant was accepting appliances without performing recovery on refrigerant-containing appliances or completing required verification statements. EPA provided a sample of an acceptable verification statement.

25. On January 27, 2009, Defendant responded to the 2008 Section 114 request and again confirmed that it had been disposing of appliances without performing recovery or collecting proper verification statements for at least the last 12 months.

26. In response to an EPA request on or about May 21, 2009, Defendant sent some verification statements to EPA covering the period from mid-January to the time of the request. The statements were incomplete and suggested that suppliers were illegally venting refrigerants prior to sale to Defendant.

27. On March 10, 2010, EPA inspected Defendant's facility again ("2010 Inspection"). Defendant was unable to provide any verification statements for the last year. EPA inspectors witnessed the sale of two refrigerators to Defendant. Upon request, Defendant was unable to provide the verification statements for those two refrigerators. Additionally, EPA inspectors noted various other refrigerators which had been thrown onto other scrap metal piles around the facility.

28. Following the 2010 Inspection, EPA requested and received verification statements from Defendant for the month of September 2009.

29. On June 16, 2010, EPA issued a second FOV (2010 FOV) for violating the final disposal requirements. Defendant provided additional verification statements as requested by EPA.

**CLAIM FOR RELIEF**

30. Paragraphs 1 through 29 are realleged and incorporated herein by reference.

31. At all times relevant to this Complaint, Defendant owned and operated a scrap metal and iron recycling business whose operations include the receiving, processing, and temporary storage of appliances that contained Class I and Class II refrigerants.

32. Defendant is the final disposer of appliances within the meaning of 40 C.F.R. § 82.156(f) because it handles appliances in a manner that would likely result in the release of refrigerant; therefore Defendant was responsible for recovering the refrigerant from appliances it accepted or verifying that the refrigerant had been previously removed from appliances it accepted, in accordance with 40 C.F.R. § 82.156(f).

33. Beginning on approximately February 21, 2008 and continuing to present, Defendant has knowingly disposed of appliances that either contained or once contained Class I and/or Class II refrigerants.

34. In violation of 40 C.F.R. § 82.156(f), Defendant either failed to recover the refrigerant prior to disposal, or to obtain the proper required verification that all remaining refrigerant was recovered from the appliances and that the appliances no longer contained any refrigerant.

35. Defendant's repeated failures to remove refrigerant or obtain proper verification statements are indicative of systematic noncompliance with the final disposal requirements of 40 C.F.R. § 82.156(f).

36. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), as adjusted by the Federal Civil Penalties Inflation Adjustment Act at 40 C.F.R. Part 19.4, the violations set forth

above subject Defendant to a civil penalty of up to \$32,500 per day for each violation occurring between February 21, 2007 through the present. *See* 69 Fed. Reg. 7126 (February 13, 2004).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

- (1) Assess civil penalties and issue an injunction against Defendant for its violation of the Clean Air Act and the applicable regulations.
- (2) Award the United States its costs and disbursements in this action; and
- (3) Grant the United States such other equitable relief as this Court deems just and proper.

Respectfully submitted,



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P 29574